

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 221011713
L. BELLEY)
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OPINION

Representing the Parties:

For Appellant: L. Belley
R. Schnarr, Representative

For Respondent: Sarah Fassett, Attorney
Jaclyn Zumaeta, Assistant Chief Counsel

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, L. Belley (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,136, plus applicable interest, for the 2018 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Asaf Kletter, Keith T. Long, and Kenneth Gast held an oral hearing for this matter in Cerritos, California, on February 14, 2024. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellant may exclude Canadian pension income, or deduct or credit Canadian taxes paid on that income, in determining her California income tax liability.

FACTUAL FINDINGS

1. On February 15, 2019, appellant timely filed her 2018 California Resident Income Tax Return (return) reporting zero total tax.¹

¹ Appellant and R. Schnarr, her representative in this appeal, are married; however, appellant filed her return using the “single” filing status.

2. FTB later received information from the IRS that appellant reported a different federal adjusted gross income (AGI) to the IRS than the amount she reported on her return. FTB issued appellant a Notice of Proposed Assessment (NPA) that increased her California AGI by \$45,460 to match her federal AGI and proposed additional tax of \$1,136 plus interest.²
3. Appellant protested the NPA.³ Appellant explained that she would file an amended return for the 2018 tax year; however, she requested that FTB reconsider her tax liability. Appellant asked that FTB exclude \$24,042.52 from her California AGI, which was her Canadian teacher's pension income, because she paid foreign (i.e., Canadian) taxes on that income and claimed a foreign tax credit on her federal tax return. Appellant asserted that if the income must be included, California should allow her to claim a credit, as the federal government allows. Appellant referred to U.S.-Canada Income Tax Treaty (Treaty), Article XVIII(2)(a),⁴ concerning the rate of tax on pensions and annuities.
4. On April 18, 2022, FTB received appellant's amended return, which reported that her federal AGI was \$24,041 less than the federal AGI that appellant reported to the IRS.⁵
5. FTB later issued a position letter to appellant which explained that it would affirm the NPA because California residents are taxed on all their income regardless of source, California law requires taxpayers to report their federal AGI on their California tax return, and California does not give any credit for taxes paid to other countries.

² For personal income tax purposes, California generally conforms to Internal Revenue Code section 62, defining federal AGI, except as otherwise provided. (R&TC, § 17072(a).) A taxpayer must generally report the same federal AGI from the federal return on his or her California return, subject to California-specific addition and subtraction modifications. Appellant did not report any modifications on her timely filed return or amended return.

³ On April 15, 2022, appellant made a payment of \$1,291.09, which FTB has indicated it will apply when this appeal is final.

⁴ Convention With Respect to Taxes on Income and on Capital, Can.-U.S., September 25, 1980, T.I.A.S. No. 11087, as amended. IRS Pub. 597 available at <https://www.irs.gov/publications/p597>, contains information regarding the Treaty, and the Treaty is available on the IRS's website.

⁵ Appellant's timely filed return excluded \$45,460 from federal and California AGI. Appellant's amended return excluded \$24,041 from federal and California AGI. The difference between the federal and California AGI reported on appellant's amended return and her timely filed return is \$21,419 (\$45,460 - \$24,041 = \$21,419). On her returns, appellant has consistently excluded \$24,041 from her federal and California AGI, which appears to be comprised of the Canadian teacher's pension income of \$24,042.52. Appellant has not explained what the additional \$21,419 excluded from her timely filed return consisted of and does not exclude this amount from her amended return; therefore, it will not be discussed further. Appellant does not contend on appeal that any amount other than her Canadian teacher's pension income should be excluded from her California taxable income.

6. On September 30, 2022, FTB issued a Notice of Action affirming the NPA.
7. Appellant timely appealed.
8. Appellant's 2018 federal Account Transcript, dated November 8, 2022, shows that the IRS did not adjust appellant's federal AGI from the amount the IRS reported to FTB.

DISCUSSION

An FTB determination is generally presumed to be correct, and a taxpayer bears the burden of proving otherwise. (*Appeal of Nag and Rudd*, 2023-OTA-150P.) To carry that burden, appellant must point to an applicable statute and show by credible evidence that she comes within its terms. (*Appeal of Jindal*, 2019-OTA-372P.) Tax credits, deductions, and exclusions are a matter of legislative grace, and taxpayers bear the burden of proving they are entitled to claimed tax credits. (*Appeal of Buehler*, 2023-OTA-215P; *Appeal of Vardell*, 2020-OTA-190P; *Polone v. Commissioner* (9th Cir. 2007) 505 F.3d 966, 969.) Statutes granting tax credits are to be construed strictly against the taxpayer with any doubts resolved in FTB's favor. (*Ibid.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Nag and Rudd, supra.*) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Ibid.*)

Appellant advances four grounds for error in FTB's determination. First, appellant asserts that she earned most of her income outside of California, and California unfairly taxes her Canadian pension income on which appellant has paid Canadian taxes. However, California residents are taxed upon their entire taxable income. (R&TC, § 17041(a).) Here, it is undisputed that appellant was a California resident for the 2018 tax year, and therefore California may tax appellant's entire taxable income, regardless of where it is earned.⁶ Moreover, taxpayers must generally report the same federal AGI on both their California and federal returns. (R&TC, § 17072(a).) FTB thus correctly revised appellant's California AGI to equal her federal AGI.

Second, appellant claims that California unfairly fails to provide for a foreign tax credit for Canadian taxes paid on the Canadian pension income, unlike federal law. (See Internal Revenue Code (IRC), § 901 et seq.) Appellant is correct that California's Personal Income Tax Law (PITL) does not allow a foreign tax credit. While a taxpayer may claim an other state tax credit for taxes paid to another state under California tax law, the term "state" does not

⁶ California does not include qualified retirement income in computing the gross income of a nonresident. (R&TC, § 17952.5.)

include foreign countries. (R&TC, §§ 18001, 18002; Cal. Code Regs., tit. 18, § 18001-1(a); see *Tetreault v. Franchise Tax Bd.* (1967) 255 Cal.App.2d 277, 280 [resident individual may not deduct foreign income taxes paid and is not allowed a foreign tax credit].) Moreover, R&TC section 17024.5(b)(7) provides that, unless otherwise specifically provided, when applying any provision of the IRC for purposes of the PITL, a reference to foreign income taxes and foreign income tax credits is not applicable. California also does not allow a deduction from AGI for state, local, and foreign income, war profits, and excess profit taxes, unlike the federal law. (R&TC, § 17220(a).) Appellant identifies no applicable California statute which allows her to exclude foreign income or claim a credit or deduction for foreign taxes paid on that income; therefore, appellant must include all her Canadian pension income in her California AGI and pay the resulting tax. (See *Appeal of Jindal, supra.*)

Appellant asserts that the law is unfair; however, OTA's role in this appeal is to apply the law. (*Appeal of Dandridge*, 2019-OTA-458P.) Here, appellant does not dispute that California law is clear that California residents may not exclude foreign income, nor may they deduct or claim a credit for foreign taxes paid on that income.

Third, appellant argues that she may exclude the Canadian pension income from her California AGI under the Treaty. However, the Treaty is between the U.S. and Canada, and in the case of the U.S., it applies to the federal income taxes imposed by the IRC. No language in the Treaty indicates that its terms apply to, or preempt, state income taxes. The U.S. Supreme Court has held that tax treaties entered into by the U.S. do not generally prohibit the taxing activities of sub-national governments, such as states. (See *Container Corp. v. Franchise Tax Bd.* (1983) 463 U.S. 159, 196.) Similarly, OTA and its predecessor have declined to read any restrictions on California's taxing authority when treaties refer only to federal, not California, income taxes. (*Appeal of Stabile*, 2020-OTA-198P.)

Fourth, appellant argues that FTB should exclude her Canadian pension income from her California AGI because appellant and R. Schnarr filed a joint return for the 2016 tax year which excluded the Canadian pension income, along with a letter explaining their position, and FTB accepted that return and issued a refund. FTB argues that it did not determine the merits of appellant's position; rather, FTB asserts it simply accepted the 2016 return but never audited it. Regardless, the 2018 tax year is at issue in this appeal, not the 2016 tax year, and each tax year stands on its own terms and must be separately considered. (*Appeal of Kwon et. al.*,

2021-OTA-296P; *Appeal of Laude* (76-SBE-096) 1976 WL 4112 [OTA’s predecessor not bound by FTB’s determination in a prior tax year].)

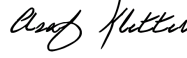
For the foregoing reasons, appellant has not established that FTB’s determination for the 2018 tax year is incorrect, and it must be upheld. (*Appeal of Nag and Rudd, supra.*)

HOLDING

Appellant may not exclude Canadian pension income, or deduct or credit Canadian taxes paid on that income, in determining her California income tax liability.

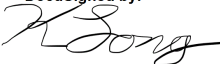
DISPOSITION

FTB’s action is sustained.

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Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:

DC88A60D8C3E442...

Keith T. Long
Administrative Law Judge

DocuSigned by:

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Kenneth Gast
Administrative Law Judge

Date Issued: 3/22/2024